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Counsel for Official Committee of Tort Claimants

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

In re:

PG&E CORPORATION

-and-

**PACIFIC GAS AND ELECTRIC
COMPANY,**

Debtors.

- ☐ Affects PG&E Corporation
- ☐ Affects Pacific Gas and Electric Company
- ☒ Affects both Debtors

**All papers shall be filed in the Lead Case,
No. 19-30088 (DM)*

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Case No. 19-30088 (DM)

Chapter 11

(Lead Case)

(Jointly Administered)

**DECLARATION OF DAVID J.
RICHARDSON IN SUPPORT OF
OBJECTION OF THE OFFICIAL
COMMITTEE OF TORT CLAIMANTS
TO CONFIRMATION OF DEBTORS'
AND SHAREHOLDER PROPONENTS'
JOINT CHAPTER 11 PLAN OF
REORGANIZATION DATED
MARCH 16, 2020**

Date: May 27, 2020
Time: 10:00 a.m. (Pacific Time)
Place: **Telephonic Appearances Only**
United States Bankruptcy Court
Courtroom 17, 16th Floor
San Francisco, CA 94102

1 I, David J. Richardson, hereby declare:

2 1. I am an attorney with the law firm of Baker & Hostetler LLP, attorneys of record
3 for The Official Committee of Tort Claimants (the “**TCC**”) appointed in the above-captioned
4 chapter 11 cases (the “**Cases**”) of PG&E Corporation and Pacific Gas and Electric Company (the
5 “**Debtors**”). I am a member in good standing of the bar of California and I am admitted to practice
6 in the United States Bankruptcy Court in the Northern District of California. I have personal
7 knowledge of the facts stated herein and I could and would competently and truthfully testify to
8 those facts if called as witness.

9 2. I am authorized to execute this declaration on behalf of the TCC. Unless otherwise
10 stated in this declaration, I have personal knowledge of the facts set forth herein. Documents that
11 are attached to this Declaration were obtained by me in the course of my duties described above.
12 Exhibits that are court documents were either served upon me in my capacity as an attorney for the
13 TCC, or were obtained by me from the ECF docket on which the document was filed.

14 3. I submit this Declaration in support of the Objection of the Official Committee of
15 Tort Claimants to Confirmation of Debtors’ and Shareholder Proponents’ Joint Chapter 11 Plan of
16 Reorganization Dated March 16, 2020 (the “**Confirmation Brief**”).

17 4. Attached hereto as Exhibit A is a true and correct copy of the *Debtors’ Motion*
18 *Pursuant to 11 U.S.C. §§ 363(b) and 105(a) and Fed. R. Bankr. P. 6004 and 9019 for Entry of an*
19 *Order (I) Authorizing the Debtors and TCC to Enter into Restructuring Support Agreement with*
20 *the TCC, Consenting Fire Claimant Professionals, and Shareholder Proponents, and (II) Granting*
21 *Related Relief* [Bankr. Dkt. 5038] (the “**Settlement Motion**”), which attaches as Dkt. 5038-1 a true
22 and correct copy of the *Restructuring Support Agreement* dated December 6, 2019, between the
23 TCC, the Debtors, certain law firms representing individuals holding approximately 70% in number
24 of the prepetition fire claims filed against the Debtors (the “**Consenting Fire Claimant**
25 **Professionals**”), and certain funds and accounts managed by Abrams Capital Management, LP and
26 Knighthood Capital Management, LLP (the “**Shareholder Proponents**”) (the “**RSA**”), ECF-
27 marked pages 40-52 of which are the Term Sheet that establishes the original terms of the parties’
28 settlement under the RSA (the “**Settlement**”).

1 5. Article I of the Settlement provided the original definition of the term “Aggregate
2 Fire Victims Consideration. However, on December 16, 2019, the parties to the Tort Claimant
3 RSA entered into the *First Amendment to Restructuring Support Agreement* [Dkt. 5143], a true and
4 correct copy of which is an exhibit to a Notice of such amendment filed in the Bankruptcy Court,
5 and is Exhibit B hereto (the “**RSA/Settlement Amendment**”). Pursuant to Section 3 of
6 RSA/Settlement Amendment, the definition of “Aggregate Fire Victims Consideration” means:

7 the aggregate consideration used to fund the Fire Victim Trust of
8 (a) \$5.4 billion in cash to be contributed on the Effective Date, (b) \$1.35
9 billion consisting of (i) \$650 million to be paid in cash on or before
10 January 15, 2021 pursuant to the Tax Benefits Payment Agreement, and
11 (ii) \$700 million to be paid in cash on or before January 15, 2022
12 pursuant to the Tax Benefits Payment Agreement; (c) \$6.75 billion in
13 New HoldCo Common Stock (issued at Fire Victim Equity Value),
14 which shall not be less than 20.9% of the New HoldCo Common Stock
15 based on the number of fully diluted shares of Reorganized HoldCo
16 (calculated using the treasury stock method (using an Effective Date
17 equity value equal to Fire Victim Equity Value)) that will be outstanding
18 as of the Effective Date (assuming all equity offerings and all other
19 equity transactions specified by the Plan, including without limitation,
20 equity issuable upon the exercise of any rights or the conversion or
21 exchange of or for any other securities, are consummated and settled on
the Effective Date, but excluding any future equity issuance not
specified by the Plan) assuming the Utility’s allowed return on equity
as of the date of the Tort Claimants RSA and reasonable registration
rights consistent with the recommendations of the Debtors’ equity
underwriter and tax rules and regulations; (d) the assignment by the
Debtors and Reorganized Debtors to the Fire Victim Trust of the
Assigned Rights and Causes of Action; and (e) assignment of rights,
other than the rights of the Debtors to be reimbursed under the 2015
Insurance Policies for claims submitted prior to the Petition Date, under
the 2015 and 2016 Insurance Policies to resolve any claims related to
Fires in those policy years. For the avoidance of doubt, the Aggregate
Fire Victim Consideration shall not include any amounts for the Public
Entities Settlement which shall be satisfied from other Plan financing
sources but not from the Aggregate Fire Victim Consideration.

22 6. On December 19, 2019, the United States Bankruptcy Court for the Northern
23 District of California entered its *Order Pursuant to 11 U.S.C. §§ 363(b) and 105(a) and Fed. R.*
24 *Bankr. P. 6004 and 9019 for Entry of an Order (I) Authorizing the Debtors and TCC to Enter into*
25 *Restructuring Support Agreement with the TCC, Consenting Fire Claimant Professionals, and*
26 *Shareholder Proponents, and (II) Granting Related Relief* [Dkt. No. 5174] (the “**9019 Order**”),
27 approving the RSA and Settlement “in their entirety,” a true and correct copy of which is attached
28 hereto as Exhibit C.

1 7. Section 3(a)(ii) of the RSA provides that it is an “Automatic Termination” event of
2 the agreement if:

3 the Effective Date of the Amended Plan does not occur prior to
4 August 29, 2020; provided, the deadlines set forth in items (A) through
5 (E) of the foregoing may be extended by mutual written consent of the
6 Debtors, the Shareholder Proponents, Requisite Consenting Fire
7 Claimant Professionals, and the TCC;

8 The TCC has not consented to an extension of the Effective Date beyond August 28, 2020. On
9 March 20, 2020, the Debtors filed their *Debtors’ Motion Pursuant to 11 U.S.C. §§ 105 and 363*
10 *and Fed. R. Bankr. P. 9019 for Entry of an Order (I) Approving Case Resolution Contingency*
11 *Process and (II) Granting Related Relief* [Bankr. Dkt. 6398], a true and correct copy of which is
12 attached hereto as Exhibit D, which among other requested relief, seeks authorization to extend the
13 Effective Date of the Plan to September 30, 2020, or December 31, 2020, either of which would
14 violate the Tort Claimant RSA.

15 8. Section 2(j) of the RSA provides that:

16 each Party shall use commercially reasonable efforts to support and
17 cooperate with the Debtors to obtain confirmation of the Amended Plan
18 and any regulatory or other approvals necessary for confirmation or
19 effectiveness of the Amended Plan;

20 Pursuant to the Recitals to the RSA, the parties are only obligated to support any Amended Plan
21 that is “revised not inconsistent with the Term Sheet.”

22 9. Attached hereto as Exhibit E is a true and correct copy of the *Debtors’ Motion*
23 *Pursuant to 11 U.S.C. §§ 363(b) and 105(a) and Fed. R. Bankr. P. 6004 and 9019 for Entry of an*
24 *Order (I) Authorizing the Debtors to Enter into Restructuring Support Agreement with the*
25 *Consenting Subrogation Claimholders, (II) Approving the Terms of Settlement with such*
26 *Consenting Subrogation Claimholders, including the Allowed Subrogation Claim Amount, and*
27 *(III) Granting Related Relief* filed in the Cases on September 24, 2019 [Bankr. Dkt. 3992] (the
28 “**Subrogation RSA Motion**”), and Exhibit A thereto, which is the Restructuring Support
Agreement dated on or about September 24, 2019, between certain Consenting Creditors and the
Debtors [Bankr. Dkt. 3992-1] (the “**Subrogation RSA**”).

1 10. The Subrogation RSA Motion informed the Court, the TCC, and all parties in
2 interest, that the Insurers acknowledged an ongoing obligation to their Insureds of at least
3 \$3.7 billion in reserves, plus additional amounts:

4 The claims information provided by the Ad Hoc Subrogation Group
5 indicates that to date, total claims had been paid in excess of \$15 billion
6 with respect to the 2017 and 2018 Northern California wildfires. The
7 information further showed a reserve amount of \$3.7 billion, and
allocations for Incurred but Not Reported and Incurred but Not Enough
Reserved amounts of \$2 billion based on the insurers' estimation of
anticipated claims that had not yet been filed or reported.

8 *Id.*, p. 22:5-9.

9 11. Attached hereto as Exhibit F is a true and correct copy of the *Declaration of Homer*
10 *Parkhill in Support of the Ad Hoc Group of Subrogation Claim Holders' Statement in Support of*
11 *the Subrogation Settlement and RSA Motion*, filed in the Bankruptcy Court on October 21, 2019
12 [Bankr. Dkt. 4348-2]. In Exhibit B to his declaration, Mr. Parkhill details extensive reserves as of
13 July 30, 2019, totaling more than \$3.4 billion in reserves, and more than \$1.2 billion in IBNR,
14 broken out by fires. At the hearing to approve the Subrogation RSA, counsel for the Subrogation
15 Group confirmed that the reserves/IBNR obligations of Insurers included at least \$4 billion in
16 excess of the \$16 billion in paid amounts as of that date.

17 12. Attached hereto as Exhibit G is a true and correct copy of this Court's *Amended*
18 *Order Pursuant to 11 U.S.C. §§ 105 and 363 and Fed. R. Bankr. P. 9019 (I) Approving Case*
19 *Resolution Contingency Process and (II) Granting Related Relief* [Dkt. No. 6937], entered
20 April 24, 2020 in the Debtors' Cases.

21 13. Attached hereto as Exhibit H is a true and correct copy of the *Debtors' Second*
22 *Amended Motion for Entry of Orders (I) Approving Terms of, and Debtors' Entry into and*
23 *Performance Under, Equity Backstop Commitment Letters, (II) Approving Terms of, and Debtors'*
24 *Entry into and Performance Under, Debt Financing Commitment Letters and (III) Authorizing*
25 *Incurrence, Payment and Allowance of Related Fees and/or Premiums, Indemnities, Costs and*
26 *Expenses as Administrative Expense Claims* filed in the Debtors' Cases on March 2, 2020 [Dkt.
27 6013].
28

14. On May 1, 2020, the Debtors filed their *Notice of Filing of Plan Supplement in Connection with Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization Dated March 6, 2020* (the "**Plan Supplement**"). The Plan Supplement is 2063 pages in length, and therefore this Declaration does not attach the entire document as a single exhibit. Attached hereto as Exhibit I is a true and correct copy of the Schedule of Assigned Rights and Causes of Action filed by the Debtors (the "**Debtors' Schedule of Assigned Claims**") as Exhibit E to the Plan Supplement. Despite the provisions in the RSA and Settlement that require the TCC's consent to any "supplement" to the Plan, and despite the language in Section 1.189 of the Plan itself which requires that the Schedule of Assigned Rights and Causes of Action must be "consistent in all respects with the definition of Assigned Rights and Causes of Action," the Debtors filed their Debtors' Schedule of Assigned Claims without the consent of the TCC. The Debtors' Schedule of Assigned Claims purports to materially amend the definition of "Assigned Rights and Causes of Action," which is a definition that is consistent in both the Settlement and the Plan. In order to ensure that the Debtors' Schedule of Assigned Claims did not mislead any parties to this case, or non-parties who may be potential defendants, as to the actual scope of Assigned Rights and Causes of Action, the TCC filed a *Notice of Official Committee of Tort Claimants' Reservation of Rights re Debtors' Filing of Plan Supplement in Connection with Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization Dated March 6, 2020* on May 4, 2020 [Dkt. No. 7057], a true and correct copy of which is attached hereto as Exhibit J.

15. Attached hereto as Exhibit K is a true and correct copy of the Schedule of Retained Claims and Causes of Action (the "**Retained Schedule**"), which was filed in the Cases by the Debtors on May 1, 2020, as Exhibit F to the Plan Supplement. The Plan does not contain any provision for a schedule of retained claims. The Retained Schedule conflicts with the Settlement's and Plan's consistent definition for Assigned Rights and Causes of Action, including by listing at least two vegetation management contractors—Chriso's Tree Trimming, Inc. and Mountain F. Enterprises—as defendants to claims retained by the Debtors. The Retained Schedule also purports to retain claims pertaining to property damage caused by 2017 and 2018 wildfires, which clearly fall within the Settlement's and Plan's consistent definition for Assigned Rights and Causes of

1 Action, and list broad and vague retentions of certain insurance-related claims, and director and
2 officer claims, both of which may also conflict with the Settlement and Plan.

3 16. Attached hereto as Exhibit L is a true and correct copy of the *Debtors' Joint*
4 *Chapter 11 Plan of Reorganization dated November 4, 2019*, filed in the Debtors' Cases on
5 November 4, 2019 [Dkt. No. 4563].

6 17. Attached hereto as Exhibit M is a true and correct copy of this Court's *Order*
7 *Pursuant to 11 U.S.C. §§ 502(b)(9) and 105(a), Fed. R. Bankr. P. 2002, 3003(c)(3), 5005, and*
8 *9007, and L.B.R. 3003-1 (I) Establishing Deadline for Filing Proofs of Claim, (II) Establishing the*
9 *Form and Manner of Notice Thereof, and (III) Approving Procedures for Providing Notice of Bar*
10 *Date and Other Information to All Creditors and Potential Creditors*, filed and entered in the
11 Debtors' Cases on July 1, 2019 [Dkt. No. 2806].

12 18. Attached hereto as Exhibit N is a true and correct copy of this Court's *Order*
13 *Extending Bar Date for Fire Claimants and Appointing Claims Representative*, filed and entered
14 in the Debtors' Cases on November 11, 2019 [Dkt. No. 4672].

15 19. Attached hereto as Exhibit O is a true and correct copy of a letter brief filed with
16 this Court on April 29, 2020 [Dkt. No. 6982] by counsel for the Public Employees Retirement
17 Association of New Mexico.

18 20. Attached hereto as Exhibit P is a true and correct copy of a letter brief filed with this
19 Court on May 1, 2020 [Dkt. No. 7048], by counsel for the Debtors.

20 21. Attached hereto as Exhibit Q is a true and correct copy of the Transcript of
21 Proceedings before the Honorable Dennis Montali, United States Bankruptcy Judge, in Case 19-
22 30088, on May 6, 2020, at 1:30 p.m.

23 22. Attached hereto as Exhibit R is a true and correct copy of the Decision Approving
24 Proposed Settlement Agreement with Modifications released on the California Public Utilities
25 Commission website in Investigation 19-06-015 on or about May 7, 2020.

26 23. Attached hereto as Exhibit S is a true and correct copy of a Press Release issued by
27 the California Public Utilities Commission, dated May 7, 2020, entitled "CPUC Penalized PG&E
28 \$2 billion for 2017 and 2018 Wildfires."

1 24. Attached hereto as Exhibit T is a true and correct copy of the Fire Victim Trust
2 Agreement and its Exhibits, which was filed with this Court on May 1, 2020, as Exhibit D to the
3 Debtors' Plan Supplement as pages 1856 – 1932 thereto.

4 25. Attached hereto as Exhibit U is a true and correct copy of the Subrogation Claims
5 Review Protocol, which is Exhibit D to the Subrogation Wildfire Trust Agreement, which was filed
6 with this Court on May 1, 2020, as Exhibit C to the Debtors' Plan Supplement, as pages 1842-1853
7 thereto.

8 I declare under the penalty of perjury under the laws of the United States that the foregoing
9 is true and correct and that this declaration was executed on the 15th day of May, 2020, in Los
10 Angeles, California.

11
12 Dated: Los Angeles, California
13 May 15, 2020

/s/ *David J. Richardson*
David J. Richardson